

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EXPOTECH ENGINEERING, INC.,
Plaintiff,

CIVIL ACTION

v.

CARDONE INDUSTRIES, INC.,
Defendant/Counterclaim Plaintiff,

NO. 19-1673

v.

EXPOTECH ENGINEERING, INC.,
ROD GHANI, MARSHALL HOSEL
Counterclaim-Defendants.

ORDER

AND NOW, this 7th day of April, 2020, upon consideration of Expotech Engineering and Rod Ghani's Motion to Dismiss the Counterclaim (ECF No. 46), Cardone Industries' Response in Opposition (ECF No. 50), and Expotech's Reply in Support (ECF No. 57); Marshall Hosel's Motion to Dismiss the Counterclaim (ECF No. 52) and Cardone's Response in Opposition (ECF No. 61), Hosel's Motion for a More Definite Statement (ECF No. 53) and Cardone's Response in Opposition (ECF No. 62), and Hosel's Motion to Dismiss the related case against him (ECF No. 47) and Cardone's Response in Opposition (ECF No. 54), **IT IS ORDERED** that the Motions are granted in part and denied in part as follows:

1. With respect to Expotech's Motion to Dismiss the alter ego allegations against Ghani in the Counterclaim, the Motion is **DENIED**.
2. Expotech's Motion to Dismiss Count I (breach of contract) of the Counterclaim is **DENIED**.
3. Expotech's Motion to Dismiss Count II (breach of contract) of the Counterclaim is **GRANTED** to the extent Cardone relies on the Arizona lawsuit and accordingly **DISMISSED WITHOUT PREJUDICE**. The Motion is **DENIED** to the extent Count II of the Counterclaim relies on the copyright application.

4. Expotech's Motion to Dismiss Cardone's request for consequential damages for its breach of contract Counterclaims is **DENIED**.
5. Expotech's Motion to Dismiss Count III (breach of warranty of workmanlike performance) of the Counterclaim is **DENIED**.
6. Expotech's Motion to Dismiss Count IV (breach of warranty of fitness for a particular purpose) of the Counterclaim is **DENIED**.
7. Expotech's Motion to Dismiss Count V (unjust enrichment) of the Counterclaim is **GRANTED**. This count is **DISMISSED WITH PREJUDICE** with respect to Expotech and **DISMISSED WITHOUT PREJUDICE** with respect to Ghani.
8. Expotech's Motion to Dismiss Count VI (declaratory judgment) of the Counterclaim is **DENIED**.
9. With respect to Expotech's Motion to Dismiss Count VII (conversion) of the Counterclaim, the Motion is:
 - a. **GRANTED** to the extent Cardone seeks contract damages. This claim for contract damages is **DISMISSED WITH PREJUDICE**;
 - b. **DENIED** to the extent Cardone is seeking extracontractual damages against Expotech; and
 - c. **GRANTED** as it pertains to Ghani individually. This claim is **DISMISSED WITHOUT PREJUDICE**.
10. Hosel's Motion for a More Definite Statement is **GRANTED**. Cardone shall include in any Amended Counterclaim a more definite statement regarding Counts VIII and IX (RICO and RICO conspiracy) containing the following information:
 - a. Describe the effect of the enterprise on interstate or foreign commerce.
 - b. Describe how the affairs of the enterprise were conducted through a "pattern of racketeering activity" under 18 U.S.C. § 1962(c). In describing the "pattern of racketeering activity," include the following information:
 - i. List the alleged predicate acts and the specific statutes allegedly violated by each predicate act;
 - ii. Describe the alleged relationship between the activities and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all;

- iii. List each Defendant and state the alleged misconduct and basis of alleged liability of each Defendant;
 - iv. List any alleged wrongdoers, other than the Defendants, and state the alleged misconduct of each wrongdoer;
 - v. Describe what benefits, if any, the alleged enterprise and each Defendant received from the alleged pattern of racketeering activity;
 - vi. State how the alleged predicate acts in combination satisfy the relatedness requirement under RICO;
 - vii. State how the alleged predicate acts in combination satisfy the continuity requirement under RICO;
 - viii. Provide any known dates of the predicate acts, the participants in each predicate act, and a description of the facts surrounding each predicate act.
- c. Describe how Cardone was damaged and how those damages were proximately caused by the alleged RICO violation.
 - d. If the Counterclaim alleges a violation of 18 U.S.C. § 1962(d), describe the alleged conspiracy.
 - e. Provide any additional information that you believe would be helpful in processing your RICO claim.
11. Expotech's Motion to Dismiss Count VIII (RICO) and Count IX (conspiracy to violate RICO) of the Counterclaim is **DENIED AS MOOT**.
 12. Expotech's Motion to Dismiss Count X (civil conspiracy) of the Counterclaim is **DENIED**.
 13. Expotech's Motion to Dismiss Count XI (aiding and abetting breach of fiduciary duty) of the Counterclaim is **DENIED**.
 14. Hosel's Motion to Dismiss Count V (unjust enrichment) of the Counterclaim is **DENIED**.
 15. Hosel's Motion to Dismiss Count VII (conversion) of the Counterclaim is **DENIED**.
 16. Hosel's Motion to Dismiss Counts VIII (RICO) and IX (conspiracy to violate RICO) of the Counterclaim is **DENIED AS MOOT**.
 17. Hosel's Motion to Dismiss Count X (civil conspiracy) of the Counterclaim is **DENIED**.

18. With respect to Hosel's Motion to Dismiss Count III (fraud in the inducement) of the Complaint against him, the Motion is **GRANTED**. This count is **DISMISSED WITH PREJUDICE**.
19. With respect to Hosel's Motion to Dismiss Count IV (breach of fiduciary duty) of the Complaint against him, the Motion is **GRANTED** and **DISMISSED WITH PREJUDICE** to the extent the claim relies on contract violations. To the extent the claim relies on the bribery scheme, the Motion is **DENIED**.

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.